Supreme Court, U.S.
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(3)

NO. 00-208

IN THE
SUPREME COURT OF THE UNITED STATES

CLAUDIA DEGENNARO,

Petitioner,

v.

ROBERT C. FURR, chapter 7 trustee,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

REPLY BRIEF

Claudia DeGennaro, *Pro Se*
462 S.W. Molloy St.
Port St. Lucie, FL 34984
561/340-1960

LIST OF PARTIES

Petitioner	Counsel
Claudia DeGennaro	Pro Se
Respondent	
Robert C. Furr	Furr & Cohen, P.A. 1499 W. Palmetto Park Rd. Suite 412 Boca Raton, FL 33486
Other Parties	
Janie Dean Chevrolet, Inc. Patricia Dean Estate of Roger Dean	Richard Goldstein, Esq. Goldstein & Tanen, P.A. Two South Biscayne Blvd. Suite 3250 Miami, FL 33131
United States Trustee	Solicitor General of the United States Department of Justice 950 Pennsylvania Ave., N.W. Room 5614 Washington, D.C. 20530-0001

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ARGUMENT IN SUPPORT OF GRANTING WRIT

1. The lower courts failed to address whether Federal Rule of Civil Procedure - Rule 4 (1992) was applicable.

Although the Respondent contends that "the Bankruptcy Court *specifically addressed* whether other Rules applied and found that the Trustee only needed to comply with Bankruptcy Rule of Procedure 7004(b)(9) which was done."...this is a misstatement of the facts and the Respondent seeks to deflect attention from the truth. (emphasis added) (Respondent Br. at 6) The Respondent understandably makes no effort and fails to cite any part of the record that supports his new theory that the bankruptcy court "addressed whether other Rules applied", as the bankruptcy court never addressed any other rule that applied to service of process or process of service. The records clearly show that the only rule that pertained to service that the bankruptcy court and the subsequent appeal courts addressed was 7004(b)(9). (Respondent Br. App. at 5a). In particular, the lower courts, when specifically requested by the Debtor, did not and would not address whether Fed.R.Civ.P., Rule 4 (1992 version) applied to this instant case. There is not a scintilla of evidence to support the Respondent's contention that the lower courts "specifically addressed" the issue of whether the 1992 Fed.R.Civ.P., Rule 4, was applicable to this instant case. Simply, the bankruptcy court and the subsequent appeal courts ignored and laid silent as the to Debtor's request to make a determination on this issue.

2. Past deeds recalled...The trustee stalled, stonewalled and stymied the debtor's discovery efforts.

The Debtor sought to follow the bankruptcy court's direction in the discovery and pre-hearing process on the Debtor's Motion to Vacate the Final Default Judgment Denying

Discharge. The record will show that the Respondent from July 1996 through October 1996 refused to allow the Petitioner to review his documents in his possession relative to the Denial of Discharge matter. The Petitioner wrote the Respondent several letters and called his office, but the Respondent refused to exchange his witness and document list until the eleventh hour and only after the Debtor had obtained a subpoena, the Trustee filed a Motion to Quash the Subpoena and the Debtor made a Motion to Compel. (Petitioner R.Br.App 7 & 9) The record will show that the Trustee deliberately refused and failed to complete the discovery requirements and give the Debtor all the required documents at the time of the hearing on the Debtor's Motion to Vacate the Default Final Judgment Denying her Discharge.

The Respondent asserts that "the unrefuted testimony as well was that the Trustee's office did not receive the Complaint back in the mail from the closed Mailboxes, Etc. box until April 30, 1993." (Respondent's Br. at 3) This is disputed and a review of the record, however, will reveal that such an occurrence is highly unlikely. The Respondent testified that someone in his office used an office stamp[1] to date stamp the returned mail reportedly received on April 30, 1993. Yet, it is important to note that the manager of the rented post office box, who has nothing to gain or lose by his testimony in this case, swore that he returned the mail on November 6, 1992[2]. (Petitioner R.Br App. 12). The Respondent did not even offer a valid or a reliable explanation as to the huge time difference from

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[1]No official Post Office date stamp confirmed this date.

[2]Affidavit attached to the Debtor's Motion for Reconsideration of the Motion to Vacate the Final Default Judgment Denying her Discharge.

November 6, 1992 to April 30, 1993, nearly 6 months as to when he claimed he received the Summons and Complaint back from the closed post office box. The reality and truth is the Debtor's rented post office box was closed on the 6th day of November, 1992.

It makes no sense that a trustee, who is noted and recognized as a sophisticated bankruptcy expert and trial lawyer, would not "go through every document" in his possession to determine if a good cause existed against the debtor to deny her discharge and if there was supporting evidence to substantiate allegations (including the allegation that the "debtors changed residences without informing the trustee") and then not "go through every document" to find a more current and reasonable address for the debtor to effectuate service under the circumstances. In order for the trustee to make a truthful and accurate allegation that the debtor committed a misconduct, then he would have had to go "through every document", particularly to determine whether the debtor had filed a change of address notice.

3. Facts not disputed by the Respondent:

- The Debtor was out of money.
- The Debtor was being evicted from her home.
- The Trustee was noticed that the Debtor's landlord sought to evict the Debtor from her home. (Petitioner R.Br.App.3)
- The Trustee gave the landlord's attorney two addresses to send notification to the Debtor of impending bankruptcy proceedings for the eviction proceeding.(Petitioner R.Br.App.4, lines 16-18 and App.5, lines 19-20)
- The Respondent did not follow the Federal Rules of Civil Procedure, Rule 4(c)

Simply, the Debtor could not afford a rented post office box and did not renew the lease on the rented post office box, stop paying the rent on the rented post office box and stopped using and picking up mail at the rented post office box. The Respondent contends that "the Debtor herself testified that she stopped picking up her mail due to personal reasons and this was a large factor in the Court's determination that any failure by the Debtor to receive service of process was due to her own actions." (Respondent's Br. at 7) In actuality, it was the Petitioner's lack of funds that caused her to stop using the rented post office box and did not renew the post office box rental lease when it expired in August of 1992. Therefore, due to the economics (the lack thereof), the Debtor used her home address to receive her mail by August 1992. The fact that the Debtor stopped picking up mail at a closed post office box in August 1992 because she did not renew her lease should not be held against her. The Respondent chose to only use the closed post office box in November 1992 to send his Summons and Complaint, when he had other more reasonable options, the Petitioner's home address. The reality and uncontroverted truth is the debtor's rented post office box was closed on the 6th day of November, 1992 and all mail was immediately returned that day,

4. The Whole Truth.... Misstatements by the Respondent

A. "Repeated Requests". The Respondent makes a misstatement in his brief were he states "...Paragraph 13 of the Complaint wherein the Trustee alleged that despite repeated requests, the Petitioner refused to divulge to the Trustee her residence address as the Petitioner had moved from her original residence post-petition." (Respondent Br. at 2) First, the Respondent ad-libbs by weaving new words into the Complaint

that do not and did not exist by stating and implying in his brief before this Court that the Respondent had made "*repeated* requests". (emphasis added) It is important to note that the Complaint at Paragraph 13 simply does not make that allegation. (Petitioner R.Br. App.2) More importantly, the Petitioner denies that this allegation and the Complaint does not even offer a date, time or evidence to support such a contention. Moreover, the Petitioner was unable to refute this allegation due to the fact that the Respondent withheld documents from the Petitioner (Petitioner R.Br. App.7 & 9) and due to the bankruptcy court's refusal to allow the Debtor to put on or discuss her meritorious defense. The Respondent further stretches by contending that the Petitioner refused "to give her residence address to *any party* involved in the case". (Respondent Br. at 8) There is no evidence in the record to support this, not even a scintilla and as such the Respondent cites no evidence. The uncontroverted truth of the matter is the Respondent never asked the Petitioner for her residence address and further exaggerates that "any party involved in the case" asked for the Debtor's residence address. No party, including the Trustee, asked the Debtor for her residence address.

B. Respondent asserts, to the contrary of the record, that "the Trustee did not know the Debtor's home address".

The record is clear below and confirmed, from an unbiased source, that the Trustee did know the Debtor's home address. The Trustee told the Debtor's landlord's counsel what two addresses to use in the service of process for their Motion to Lift the Automatic Stay in order to evict the Debtor, during the same time frame as when the Trustee mailed his Summons and Complaint to deny Claudia DeGennaro's Discharge to the closed post office box. (Petitioner R.Br.App.4, lines 16-18 and App.5, lines 19-20)

5. The 11th Circuit Court's decision in *Ponsoldt* was never applied to this case.

The 11th Circuit Court merely echoed the district court and both courts just recited the caption of the case and never analyzed or compared the facts to this instant case. The Respondent cites *no place in the record* below where either court used this case in their decision. More importantly, this case regards the issue **not** as the Respondent portrays the matter by stating that "*Ponsoldt* stood for the proposition that where there are multiple methods for service of process under the law....", but rather this case regards the question of what Federal rules applied in 1992 to service of process, particularly Fed.R.Civ.P.4, which is the same question presented herein. (Respondent Br. at 10)

6. The Petitioner's Constitutional Rights were Violated

Lastly, the Trustee made unsubstantiated allegations in his Complaint against the Debtor and such were unfounded. It is important to note that the Debtor had a strong and meritorious defense, but was not afforded an opportunity and was actually precluded from presenting her defense and any evidence to the bankruptcy court. The bankruptcy court simply allowed the Trustee to put his side on, but did not allow the Debtor the opportunity to put forth her evidence. Therefore, there was no equality or fairness, simply no justice.

The Petitioner asserts, again, that in an *in personam* proceeding, the Respondent is required to have personally served the Petitioner to effectuate service and not just mail the Summons and Complaint to a closed post office box (known or unknown to be closed).

The Respondent hangs his hat on the Debtor's failure to file a change of address with the bankruptcy court. It is important to note that *Collier on Bankruptcy*, a recognized authority on bankruptcy procedures and matters, states in §4002.06 that "*Presumably, an individual debtor will not be aware of this requirement...*", thus only an attorney would know that a debtor is required to notify the court when they change their address. (emphasis added) The Debtor, simply, was not aware of the technical requirement to file a change of address with the court.

The Petitioner contends that the need for the broadest interpretation of the service of process and process of service rules, far outweighs the need to take a narrow interpretation of the law in order to achieve the goal, obtain and maintain minimal due process requirements, particularly since denial of discharge is an *in personam* matter. Thus, because all the courts below simply and narrowly applied only Federal Rules of Bankruptcy Procedure, Rule 7004(b)(9) it is too narrow and grossly unfair under all the circumstances.

The Petitioner was unfairly deprived of the all important right to defend herself, as the Respondent took advantage of the situation and took advantage of the Petitioner who had no attorney to assist her. The Petitioner would have objected to and defended herself had she known about the impending proceeding that the Trustee had surreptitiously and wrongly initiated against her, as the Debtor had a valid defense.

CONCLUSION

For the reasons set forth in the Brief for the Petitioner and in this Reply Brief, the judgments of the lower courts including the bankruptcy court must be reversed to the extent that they refused to apply proper legal standards and rules of service of process and process of service; and the factual conclusions were in error.

Respectfully submitted,

Claudia DeGennaro

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462 S.W. Molloy Street
Port St. Lucie, Florida 34984

Dated: September 13th, 2000

APPENDIX

APPENDIX - EXCERPTS FROM TRUSTEE'S ADVERSARY COMPLAINT OBJECTING TO THE DISCHARGE OF THE DEBTORS DATED AND FILED ON NOVEMBER 12, 1992

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:
CLAUDIA DEGENNARO and
ANTHONY DEGENNARO,

CASE NO. 92-30351-BKC-RAM
Chapter 7

Debtors.
_____/

ROBERT C. FURR, TRUSTEE IN BANKRUPTCY,

Plaintiff,

ADV. NO. 92-1181-BKC-RAM-A

vs.

CLAUDIA DEGENNARO and
ANTHONY DEGENNARO,

Defendants.
_____/

* * *

COMPLAINT OBJECTING TO DISCHARGE OF THE DEBTORS

13. During the course of the proceedings in the main case, the Debtors changed residences and refused to disclose the new residence to the Trustee.

COUNT III
727(a) (2)(B)

23. (b) The Debtors changed residences without informing the Trustee and decline to answer any questions the Trustee regarding the change of residence;

* * * *

APPENDIX - TRANSCRIPT OF HEARING OF OCTOBER 20, 1992

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In the Matter of:

CLAUDIA DEGENNARO and ANTHONY DEGENNARO,

CASE NO. 92-30350-BKC-RAM

Debtors.
_____/

MOTION FOR RELIEF FROM STAY AND/OR FOR ADEQUATE PROTECTION (CALVIN & PATRICIA RANDOLPH)

October 20, 1992

The above-entitled cause came on for Hearing before the HONORABLE ROBERT A. MARK, one of the Judges of the UNITED STATES BANKRUPTCY COURT, in and for the SOUTHERN DISTRICT OF FLORIDA, at Room 329, 701 Clematis Street, West Palm Beach, Palm Beach County, Florida, at a session of said Court commencing at 4:20 p.m. on Tuesday, October 20, 1992, and the following proceedings were had:

APPEARANCES:

Nadel & Associates, P.A., by
Richard D. Nadel, Esquire,
Attorney for Calvin & Patricia Randolph

THE COURT: DeGennaro, motion for stay relief.

MR. NADEL: Yes, your Honor.

THE COURT: Did you notice Mr. Furr?

MR. NADEL: Yes, I did. He just spoke with me and has no objection. We have got an order.

THE COURT: Okay. What does this involve?

MR. NADEL: I represent Mr. And Mrs. Randolph who own a property of which Mrs. DeGennaro signed a lease for and has not paid, as mentioned in the motion, since July 15th. We would like relief from stay to evict her.

THE COURT: Is she living there?

MR. NADEL: Yes, I believe so.

THE COURT: And how did you serve her with notice?

MR. NADEL: I have served notice upon, as you can see, both to, I spoke to Bob Furr and I asked him for the addresses. I got two addresses that I have served her

with, one at 4300 South U.S. Highway #1, Suite 203, 329, Jupiter, Florida, and the other the property itself where I believe she is living.

THE COURT: When you say at the property, you just mailed it to that address?

MR. NADEL: I believe so, yes.

THE COURT: All right. I will grant the relief.

MR. NADEL: I have a proposed order which Mr. Furr is in agreement with.

THE COURT: All right.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

IN RE:

ANTHONY DEGENNARO,
CLAUDIA DEGENNARO and

Debtor. /

CASE NO. 92-30350-BKC
CHAPTER 7

AMENDED ORDER GRANTING CREDITORS CALVIN RANDOLPH AND PATRICIA RANDOLPH MOTION FOR RELIEF IN THE AUTOMATIC STAY

THIS CAUSE, being heard on CALVIN RANDOLPH and PATRICIA RANDOLPH's Ex Parte Motion to Amend the Court's October 20, 1992 Order on Petitioner's Motion for Relief from Stay and the Court being fully advised in the premises it is therefore,

ORDERED AND ADJUDGED as follows:

GRANTED. The Creditors, CALVIN RANDOLPH and PATRICIA RANDOLPH, shall have complete Relief from the Automatic Stay to pursue an eviction action or otherwise remove the Debtors, ANTHONY DEGENNARO and CLAUDIA DEGENNARO, from the subject property located at 5898 Urdea Road, Jupiter, FL. PCN # 00424035000003050

DONE AND ORDERED at West Palm Beach, Florida, in said District, this 02 day of December, 1992.

/s/
ROBERT A. MARK
US Bankruptcy Judge

APPENDIX - EXCERPTS FROM TRUSTEE'S MOTION FOR PROTECTIVE ORDER AND MOTION TO QUASH SUBPOENA DATED OCTOBER 2, 1996

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

CLAUDIA DEGENNARO and	CASE NO. 92-30351-BKC-RAM
ANTHONY DEGENNARO,	Chapter 7
Debtors.	
_____/	
ROBERT C. FURR, TRUSTEE IN BANKRUPTCY,	
Plaintiff,	ADV. NO. 92-1181-BKC-RAM-A
vs.	
CLAUDIA DEGENNARO and ANTHONY DEGENNARO,	
Defendants.	
_____/	

TRUSTEE'S MOTION FOR PROTECTIVE ORDER AND MOTION TO QUASH SUBPOENA

COMES NOW ROBERT C. FURR, TRUSTEE IN BANKRUPTCY, by and through counsel, and for Motion for Protective Order and Motion to Quash Subpoena would state as follows:

14. Defendant, Claudia DeGennaro, caused to be served upon Records Custodian, Robert C. Furr, Trustee in Bankruptcy, a Subpoena in a Case Under an Adversary Proceeding on September 25, 1996, requesting numerous documentation in preparation for the hearing on Debtors' Motions to Vacate Final Judgment Denying Discharge. A copy is attached hereto as Exhibit "A".

15. The Trustee objects to the Subpoena as being overbroad and beyond the scope of the pending Motion to Vacate Final Judgment of Discharge.

16. However, the Trustee will produce documents relating to Counts of the Complaint Objecting to Discharge of Debtor and documents relating to the Trustee obtaining the Default and Final Judgment.

17. The Trustee is producing the following documents to the debtor:

* * * *

APPENDIX - EXCERPTS FROM DEBTOR'S MOTION TO COMPEL TRUSTEE TO PRODUCE AND PERMIT INSPECTION AND COPYING OF RECORDS DATED OCTOBER 17, 1996

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

In re:
CLAUDIA DEGENNARO and
ANTHONY DEGENNARO,

Debtors.

CASE NO.: 92-30351-BKC-RAM
92-30350-BKC-RAM

ADV. NO.: 92-11-81-BKC-RAM

_____/

DEBTOR'S MOTION TO COMPEL TRUSTEE TO PRODUCE AND PERMIT INSPECTION AND COPYING OF RECORDS

COMES NOW, Debtor, CLAUDIA DEGENNARO, and moves this Court for an Order compelling the Trustee, ROBERT C. FURR to produce and permit inspection and copying of his records and states the following in support thereof:

1. At hearing on July 25, 1996 a preliminary hearing was held on the Debtor's Motion to Vacate and Reverse Final Judgment Denying Discharge of the Debtor. At that time this Court directed the Trustee and the Debtor to exchange witness and document lists that each party would be using at the hearing to Vacate Final Judgment Denying Discharge.

2. On August 6, 1996, the Debtor, Claudia DeGennaro wrote the Trustee a letter requesting that the exchange take place by August 16, 1996.

3. In response, the Trustee sent a letter on August 14, 1996 stating he had scheduling problems and could not meet the date. The Trustee promised that "as soon as we have a hearing date, my office will contact you to make the necessary arrangements." The Trustee has never contacted the Debtor to make new arrangements.

4. Then on August 20, 1996, this Court set a hearing date for October 30, 1996. The Debtor waited for the Trustee "to make the necessary arrangements." It became apparent that the Trustee had no intention to fulfill his promise. Because of the Trustee's lack of cooperation and silence as to the documents and witnesses he planned to use at the upcoming hearing, the Debtor felt that discovery and stronger measures were necessary to help solve the situation. The Debtor, Claudia DeGennaro then had a subpoena served on the Trustee on September 25, 1996 which required the Trustee on October 4, 1996 to produce and permit inspection and copying of all documents that related in any way to the matter at hand, the Discharge of the Debtors. See attached copy, Exhibit "A".

5. In response to the subpoena, the Trustee made a motion on October 2, 1996 for a Protective Order and Motion to Quash the Subpoena. The Trustee objected to the subpoena "as being overbroad and beyond the scope of the pending Motion to Vacate Final Judgment of the Discharge." The Trustee never specified what documents were "overbroad" or what documents were beyond the scope of the pending Motion". The Trustee intentionally limited the Debtor's discovery by proceeding to pick certain documents to be produced and copied out of the subpoena's specific list.

6. The Debtor disclosed her witness and document lists to the Trustee on October 10, 1996, with the provision that she could revise her lists due to the Trustee's refusal to produce certain documents. See attached copy, exhibit "B".

7. To this date, nearly three months after the Court required that an evidentiary hearing be held on the Debtor's Motion to Vacate the Final Judgment Denying Discharge and required the parties to exchange witness and document lists, the Trustee has still failed to disclose to the Debtor his witnesses or his documents as required by the Court that he plans on using at the hearing.

* * * *

AFFIDAVIT

COUNTY OF PALM BEACH)
STATE OF FLORIDA)

I, Robert D. Neher, being first duly sworn upon his oath deposes and states:

1. I am the manager of the business, Mail Box Etc., located at 4300 U.S. Highway #1, Jupiter, Florida.

2. On August 25, 1992 the mailbox rental agreement for a box rented by Claudia and Anthony DeGennaro, 4300 U.S. Highway #1, Box 203-329, Jupiter, Florida had expired and was not renewed.

3. After placing several notices of my intent to close the box for not renewing the rental agreement, I closed the mailbox on November 6, 1992. All mail addressed to the DeGennaros was immediately, that day, returned to the original senders by marking the mail "Return to Sender" and I mailed the mail back through the United States Post Office.

4. Any mail for Claudia and Anthony DeGennaro that I subsequently received after closing the box was immediately returned to sender without delay.

5. On October 14, 1996 Robert C. Furr's office had a subpoena served on me requesting that I supply his office, all records regarding the lease of the DeGennaros' box. I complied with his request by faxing the documents on October 28, 1996 to his office.

6. On or about October 25, 1996 I received another piece of mail addressed to Claudia DeGennaro from the

law office of Furr & Cohen, P.A., Interstate Plaza, Suite 412, 1499 West Palmetto Park Rd., Boca Raton, FL 33486. I immediately sent the mail back to Furr & Cohen, P.A.

Dated this 16 day of November, 1996.

/s/
Robert D. Neher

Sworn to and subscribed before me
this 16th day of November, 1996.

/s/
Notary Public, State of Florida
My commission expires: 30 March 2000

MICHAEL B. RICKARD
My Commission CC529607
Expires Mar. 30, 2000